

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2016 JUL -7 P 1:55

COMMISSIONERS

DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

In the matter of:

DOCKET NO. S- 20774A-10-0494

KENNETH JOSEPH PLEIN, a married man,

MARY KATHRYN PLEIN (a.k.a. "MARY KAY PLEIN"), a married woman,

KENNETH JOSEPH PLEIN and MARY KATHRYN PLEIN (a.k.a. "MARY KAY PLEIN"), Co-Trustees of THE PLEIN FAMILY TRUST U/T/A dated DECEMBER 1, 1993,

PLEIN ENTERPRISES INCORPORATED (d.b.a. "TRI-STAR REALTY"), an Arizona corporation,

Respondents.

**SECURITIES DIVISION'S  
RESPONSE TO MOTION TO  
CONTINUE**

Arizona Corporation Commission  
**DOCKETED**

JUL 7 2016

DOCKETED BY

Patricia Peterson, through her personal representative M. Christopher Peterson, has once again requested that her action, originally filed on February 1, 2016, be continued. She requests this even though she previously informed the Securities Division of the Arizona Corporation Commission ("Commission") that she would dismiss her action. She also requests the continuance despite the fact that the only reason she gives to continue no longer exists.


Ms. Peterson asks that her action be continued pending a final order by the Superior Court. She makes this request despite the fact that she previously informed the Securities Division that she would dismiss her action as it is "moot." See Exhibit 1. She now claims it is necessary to continue the action as the Commission is holding restitution funds and she needs to ascertain that the funds held by the Commission are "properly handled." Of course, the fact that the Commission is holding

1 these funds has been known for some time. The Commission raised the issue at the Superior Court  
2 hearing of April 22, 2106, attended by Ms. Peterson's lawyer. Subsequent to that hearing, Ms.  
3 Peterson's lawyer attended a status conference in this matter on May 19, 2016, where he attempted  
4 to list reasons why this matter should continue, but never raised the issue of the funds held by this  
5 Commission. This is the first time Ms. Peterson has raised it as an issue in her pleadings. It is difficult  
6 to believe that this issue is anything other than a subterfuge to keep this matter open. In any event,  
7 Ms. Peterson's concern should be satisfied as the Superior Court issued a ruling on June 20, 2016,  
8 although not filed until July 7, 2016, ordering the Commission, as it had requested, to transfer the  
9 funds to the Clerk of the Superior Court.<sup>1</sup> See Exhibit 2.

10 Therefore, as the last reason Ms. Peterson has given for the action is satisfied, the Securities  
11 Division respectfully requests that her action be dismissed.

12 Dated this 7<sup>th</sup> day of July, 2016

13 ARIZONA CORPORATION COMMISSION

14  
15 By   
16 Mark Dinell  
17 Attorney for the Securities Division of  
18 the Arizona Corporation Commission  
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<sup>1</sup> The Securities Division does need to clarify issues that Ms. Peterson raised in her footnotes since she accuses the Securities Division of misleading this tribunal. Footnote 1 says that the Securities Division stated it was not a party to the criminal case and does not participate in the hearings. As Ms. Peterson is aware, that was a response to an erroneous claim in her February 1, 2016 motion that the Commission participated in a secret hearing in Superior Court. The Commission had not done so. Since the time of that pleading, Judge Gates requested that the Commission provide information to the Court. Honoring her request, the Commission did provide the information to the court. As to footnote 2, as Ms. Peterson is well aware, that statement, selectively chosen from the Commission's brief, was in reference to the \$4,000,000 held by the Attorney General's Office.

1 Original and 6 copies filed this  
2 7<sup>th</sup> day of July, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 W. Washington  
6 Phoenix, AZ 85007

7 Copy of the foregoing mailed this  
8 7<sup>th</sup> day of July, to:

9 Thomas K. Irvine  
10 Chance Peterson  
11 ASU Alumni Law Group  
12 Two North Central Av., Suite 1600  
13 Phoenix, AZ 85004

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## **EXHIBIT 1**

## Mark Dinell

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**From:** Chance Peterson <Chance.Peterson@asualumniawgroup.org>  
**Sent:** Tuesday, June 07, 2016 1:33 PM  
**To:** Mark Dinell  
**Subject:** RE: Plein  
**Attachments:** 20160606 Ruling.pdf

Mr. Dinell,

The Superior Court issued its ruling yesterday in the Plein criminal matter. It is attached. With this ruling, our pending motions before the ACC are moot, and I will be preparing a Notice of Withdrawal of our filing.

Thank you for your assistance throughout this matter.

Regards,  
Chance

**From:** Chance Peterson  
**Sent:** Wednesday, April 27, 2016 4:25 PM  
**To:** 'Mark Dinell' <mnd@azcc.gov>  
**Cc:** Tom Irvine <Tom.Irvine@asualumniawgroup.org>  
**Subject:** RE: Plein

Mr. Dinell,

We want to wait because Judge Gates has not yet ruled on anything. She said she would take the matters under advisement and was inclined to use the bankruptcy records rather than the ACC list. I believe she also said she would take under advisement the request to distribute the funds through the Clerk rather than the ACC. No Minute Entry has been issued. So as it stands, the funds would still be sent to the ACC per the plea agreement. If that happens, we would just want to make sure ACC releases the entirety of the funds to the victims.

We will likely join your request for a status conference for the ALJ to determine whether dismissal is appropriate.

Thanks,  
Chance

**From:** Mark Dinell [<mailto:mnd@azcc.gov>]  
**Sent:** Wednesday, April 27, 2016 2:19 PM  
**To:** Chance Peterson <[Chance.Peterson@asualumniawgroup.org](mailto:Chance.Peterson@asualumniawgroup.org)>  
**Subject:** RE: Plein

Not sure why we'd want to wait. Judge Gates has certainly not indicated that some of your issues are not before her. In any event, when I did not hear back from you I filed a motion for entry of order of dismissal today. You should receive a copy by tomorrow.

**From:** Chance Peterson [<mailto:Chance.Peterson@asualumniawgroup.org>]  
**Sent:** Wednesday, April 27, 2016 2:02 PM

**To:** Mark Dinell <mnd@azcc.gov>

**Subject:** RE: Plein

Mr. Dinell,

I think we will want to wait until Judge Gates issues a ruling. Once we get the ruling, I'm sure we will promptly dismiss as moot the action before the ACC.

Thank you,

Chance

**From:** Mark Dinell [mailto:mnd@azcc.gov]

**Sent:** Friday, April 22, 2016 3:13 PM

**To:** Chance Peterson <Chance.Peterson@asualumniawgroup.org>

**Subject:** Plein

Mr. Peterson – I assume in light of the Court's ruling today that it would determine the method of distribution and the Attorney General's deposit of 35% into the Collections Enforcement Revolving Fund that you agree the administrative action you filed is moot and thus will dismiss it. Please let me know if I am wrong and will need to file something myself.

Thanks

Mark Dinell

Arizona Corporation Commission Securities Division

(602) 542-0626

**EXHIBIT 2**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2012-009415-001 DT

06/20/2016

HON. PAMELA GATES

CLERK OF THE COURT  
A. Olson  
Deputy

STATE OF ARIZONA

SCOTT WAYNE BLAKE  
MARK DINELL  
JAMES J CARROLL III  
CHANCE PETERSON  
TERESA H FOSTER

v.

KENNETH J PLEIN (001)

MICHAEL SOUCCAR  
VICTIM WITNESS DIV-AG-CCC

EXTENSION OF TIME TO FILE GRANTED

The Court has received the State's Motion to Request an Extension of Time to File and Objection to the Restitution Orders filed 06/13/2016.

IT IS ORDERED granting the State's Motion to Request an Extension of Time to File and Objection to the Restitution Orders.

IT IS FURTHER ORDERED the State, the Arizona Corporation Commission, and any victim have until August 16, 2016 to file an objection to the restitution orders set forth in the Minute Entry prepared by the Court on May 31, 2016.

Also, the Court notes, that its May 31, 2016 Restitution Orders do not preclude victims from requesting a restitution hearing and proving loss. Rather, the Order reflects that the Court had sufficient evidence to support the restitution orders set forth in the May 31, 2016 minute entry.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2012-009415-001 DT

06/20/2016

IT IS FURTHER ORDERED the Attorney General's Victim Services Office provide notice to all investors, either on the Order's list or the original victims' list from Mr. Plein's sentencing whom are not being represented by counsel and whose contract information is available either the Commission or the Attorney General. The notice should inform the investor that the investor may dispute the amount listed in the Order's list, and provide evidence in support of the disputed amount, or seek additional losses.

IT IS FURTHER ORDERED the Arizona Corporation Commission shall transfer any restitution funds owed to the Plein victims to the Clerks' Office for the Clerk to distribute to Victims after final order of the Court.